

FILED

11/15/10

IN THE CIRCUIT COURT OF COAHOMA COUNTY, MISSISSIPPI

2011
DAVID CREWS, CLERK
BY [Signature] Deputy
PLAINTIFF

MARY MEEKS

V.

CIVIL ACTION NO. 14-CI-10-0127

MSN 0:11-CV-253-NBB-JMV

DR. KUSHNA K. DAMALLIE
and THE WOMAN'S CLINIC

DEFENDANTS

COMPLAINT

Plaintiff, by and through counsel of record, pursuant to Miss. Code Ann. § 15-1-36(15) (Rev. 2008) files this complaint against the named defendants herein, and in support thereof would show the following:

I. Introduction

1. This civil action asserts a bodily injury claim caused by healthcare provider negligence pursuant to Miss. Code Ann. § 15-1-36(15) (Rev. 2008), against defendants. The action seeks monetary damages for negligent acts occurring on September 26, 2008 during an outpatient endometrial ablation procedure that caused an uterine and small-bowel perforation and subsequent repair surgeries.

II. Jurisdiction and Venue

2. This Court has subject matter jurisdiction pursuant to the Miss. Const. Art. 6, § 156 (1890). The amount in controversy exceeds the amount prescribed by Miss. Code Ann. § 9-7-81 (1972).

3. Pursuant to Miss. Code Ann. § 11-11-3 (Supp.2008), venue is proper in Coahoma County, Mississippi because the alleged medical malpractice complained of occurred in Coahoma County, Mississippi.

III. Parties

4. Plaintiff is an adult resident citizen of Tutwiler, Tallahatchie County, Mississippi

5. Defendant The Woman's Clinic is a corporation organized and existing under the laws of the State of Mississippi and may be served with process of this Court by its duly registered agent, Charles D. Caesare, 2000 North State Street, Clarksdale, Mississippi 38614. Under the laws of the State of Mississippi, The Woman's Clinic is vicariously liable for the acts and omissions of Dr. Kushana K. Damallie occurring within the course and scope of his employment.

6. Defendant Kushana K. Damallie is an adult resident citizen of Coahoma County and may be served with process at The Woman's Clinic, 2000 North State Street, Clarksdale, Mississippi 38614. At all times complained of herein, Dr. Kushana K. Damallie was acting as an employee and agent of The Woman's Clinic.

IV. Written Notice to Medical Providers

7. Pursuant to Miss. Code Ann. § 15-1-36 (Supp. 2004), a medical negligence claim is not actionable unless the defendant health care provider is given at least sixty (60) days prior written notice of the claim. If the notice is served within sixty (60) days prior to the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended sixty (60) days, Pope v. Brock, 912 So. 2d 935 (Miss.

2005). Since plaintiff provided each defendant with sixty (60) days notice of intent to pursue medical negligence claims prior to the expiration of the statute of limitations, plaintiff's claims, pursuant to Miss. Code Ann. § 15-1-36 (Rev. 2004) are actionable.

V. Facts

8. On September 26, 2008, Meeks presented to Northwest Regional Medical Center (NWRMC) to undergo an out-patient diagnostic hysteroscopy, D & C and Nova Sure procedure secondary to symptomatic uterine fibroids, but mostly due to heavy bleeding. The procedure was performed by Dr. Damallie. During the procedure, Dr. Damallie caused a perforation of the uterus and a thermal burn injury to the bowel. Following the procedure, the patient was released to home.

9. On September 28, 2008, the patient presented to the NWRMC emergency room with complaints of abdominal pain; she had episodes of nausea and vomiting, but was afebrile. A CT scan of the abdomen and pelvis was done. Preliminary results indicated evidence of a high-grade small-bowel obstruction with a transition level at the mid to distal ileum. There was also a moderate amount of pneumoperitoneum and minimal ascites. Her BUN and creatinine were also noted to be elevated at 40 and 2, respectively.

10. On September 28, an exploratory laparotomy with segmental small bowel resection was performed by Dr. Jaiyeolua A. Adeleye who was assisted by Dr. Damallie. On entering the peritoneal cavity,

there was a moderate amount of intestinal contents present within the peritoneal cavity which were suctioned out. The small bowel was distended and edematous. A 1.5cm perforation was identified within the mid small bowel. The surrounding edges of the perforation were devitalized. There were areas of fibrinous exudated noted above the wall of the small bowel. On the uterus, there was a 3mm hole suggestive of a perforation and some blanching of the surrounding wall around the perforation that was indicative of a burn injury.

11. Dr. Damallie deviated from the applicable standards of care by failing to correctly measure the uterine cavity length and width; by failing timely recognize and diagnose that he had in fact perforated the uterus and thermally injured the small bowel and by failing to timely repair the injuries following the procedure.

12. Dr. Damallie failed to perform a cavity integrity assessment to evaluate the integrity of the uterine cavity and/or disregarded the Nova Sure alarm warning of a perforation prior to ablation treatment. If Dr. Damallie suspected or was concerned that the uterine wall had been perforated, he should have terminated the procedure immediately and performed a work-up for perforation prior to plaintiff's discharge from NWRMC.

WHEREFORE, plaintiff requests and demands judgment against the named defendants for a sum of actual and punitive damages in excess of the jurisdictional amount of this Court to be determined at trial, and for the costs of this action.

RESPECTFULLY SUBMITTED, this the 15th day of November, 2010.

MARY MEEKS, PLAINTIFF

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Plaintiff

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